UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:25-cv-109-MOC-DCK

CLEAR BLUE INSURANCE COMPANY, and CLEAR BLUE SPECIALTY INSURANCE COMPANY,	)	
Plaintiffs,	)	
v.	)	**ORDER**
YACHTINSURE SERVICES, INC.,	)	
Defendant.	)	

THIS MATTER is before the Court on Plaintiffs Clear Blue Insurance Company and Clear Blue Specialty Insurance Company's Motion for Preliminary Injunction ("Plaintiffs"), (Doc. No. 7), against Yachtinsure Services, Inc. ("Defendant"). Defendant filed a Response, and Plaintiffs filed a reply. (Doc. Nos. 34, 40). The Court held a hearing on April 22, 2025. For the following reasons, Plaintiffs' motion will be granted.

I. Background

Plaintiffs are an insurance company that offers property and casualty insurance in partnership with managing general agents ("MGAs"), third-party claim administrators ("TPAs"), and reinsurers. (Doc No. 1 ¶ 1). Plaintiffs (as the insurance company) and Yachtinsure (as MGA and TPA) entered into a General Agency Agreement dated December 7, 2020, as subsequently amended (the "GAA"), to create an insurance program for the production and administration of marine and boat insurance policies (the "Program"). (Id. ¶ 3; Doc. No. 1-1).

Defendant is the "Claim Adjuster" for all claims submitted regarding any insurance policy issued under the Program. (Doc. No. 1 ¶¶ 17–18; Doc. No. 1-1 § 1.05, Ex. D). The GAA

specifies that "[a]ll claims on [p]olicies will be adjusted, administered, settled, contested, managed, resolved and otherwise handled to completion ('Adjusted') by [Defendant][.]" (Doc. No. 1-1 § 1.05). The GAA states that Defendant is "authorized and instructed" to adjust claims "through full completion/closing/settlement of All Claim[s] (life of claim)." (Doc. No. 1-1 at Ex. D). The GAA also states that Plaintiffs "will confer authority [to Defendant] for claim settlement, dispute resolution or settling of loss reserves up to a maximum of one hundred fifty thousand dollars ($150,000), and the Company shall retain final authority for such matters in excess of such amounts." (Doc. No. 1-1 § 1.05).

According to Plaintiffs' verified complaint,[1] on October 17, 2024, Plaintiffs' senior claims specialist, Zachary Horton, emailed Defendant's underwriters Ray Watson and Liam Talbot and requested Defendant's recommendation concerning settlement of a then-pending claim (the "Claim"). (Doc. No. 1 ¶ 37). In its same-day response, Watson asserted that (1) "[a]s with all claims above and therefore outside of our contractual claim's authority limit, [Defendant] is not and cannot make any recommendations[]" and (2) [Defendant] "merely act[s] as a conduit between [Plaintiff] as the carrier and appointed legal counsel[]" such that "[a]ll claims and coverage recommendations are that of legal counsel and not Defendant." (Id. ¶ 38). Defendant has refused to adjust the Pending Claim to completion and has stated that it will not adjust to completion future claims that are over $150,000. (Id. ¶ 39). Plaintiffs subsequently sent letters to Defendant demanding that they fully adjust all claims as required by the GAA and stating that they were materially breaching the GAA. (Id. ¶ 44).

[1] In its response, Defendant challenges the validity of Plaintiffs' verified complaint as facially defective. (Doc. No. 34). Plaintiffs have filed a motion to strike that response because it was untimely, did not comply with court rules, and unfairly prejudiced Plaintiffs. (Doc. Nos. 38, 39). Assuming without deciding that the Court may consider Defendant's late response, the Court finds that Plaintiffs' verified complaint is properly verified and notarized.

II. Legal Standard

A preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief" and may never be awarded "as of right." Winter v. Natural Res. Def. Council, 555 U.S. 7, 22–24 (2008). To obtain a preliminary injunction, a plaintiff "must establish (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that the injunction is in the public interest." Id. at 20; Mountain Valley Pipeline, LLC v. W. Pocahantas Props. Ltd. P'ship, 918 F.3d 353, 366 (4th Cir. 2019). Where a plaintiff fails to establish one of these four elements, the Court may deny injunctive relief. See Jack Guttman v. Kopykake Enter., 302 F.3d 1352, 1356 (Fed. Cir. 2002).

The traditional purpose of a preliminary injunction is to protect the status quo and to prevent irreparable harm during the pendency of a lawsuit and ultimately to preserve the court's ability to render a meaningful judgment on the merits. In re Microsoft Corp. Antitrust Litig., 333 F.3d 517, 525 (4th Cir. 2003). Mandatory preliminary injunctions do not preserve the status quo and normally should be granted only in those circumstances when the exigencies of the situation demand such relief. Wetzel v. Edwards, 635 F.2d 283, 286 (4th Cir. 1980). The authority of the district court judge to issue a preliminary injunction, especially a mandatory one, should be sparingly exercised. Id.

"The grant of preliminary injunctions in diversity cases . . . is subject to federal standards" and thus federal law. Direx Israel, Ltd. v. Breakthrough Med. Corp., 952 F.2d 802, 811 (4th Cir. 1991). With respect to the first factor, however, federal courts sitting in diversity apply state law to determine the likelihood of success on the merits of plaintiff's claims. See Cap. Tool & Mfg. Co., Inc. v. Maschinenfabrik Herkules, 837 F.2d 171, 172 (4th Cir. 1988).

North Carolina law is the parties' chosen law and applies to the likelihood-of-success factor. (Doc. No. 1-1 § 12.06); see Schwarz v. St. Jude Med., Inc., 802 S.E.2d 783, 788 (N.C. Ct. App. 2017) (explaining that North Carolina courts honor contractual choice-of-law provisions).

III. Discussion

A. Likelihood of Success on the Merits

Plaintiffs argue that they are likely to succeed on their breach of contract claim because Defendant is obligated to adjust claims exceeding $150,000 to completion under the GAA and has refused to do so. Plaintiffs believe Defendant has breached the contract through both non-performance and repudiation. (Doc. No. 17 at 9).

"Repudiation is a positive statement by one party to the other party indicating that he will not or cannot substantially perform his contractual duties." Profile Invs. No. 25, LLC v. Ammons E. Corp., 207 N.C. App. 232, 236 (2010). To bring a claim for repudiation, "the words or conduct evidencing the renunciation or breach must be a positive, distinct, unequivocal, and absolute refusal to perform the contract when the time fixed for it in the contract arrives." Gupton v. Son-Lan Dev. Co., 205 N.C. App. 133, 139–40 (N.C. Ct. App. 2010).

Defendant has refused to provide any settlement recommendation regarding future claims exceeding $150,000. (Doc. No. 1 ¶ ¶ 38, 45). Defendant specifically stated in an email that it would not make settlement recommendations. Defendant has also refused to supply information about claims to Plaintiff, though the GAA requires it to "coordinate, cooperate and communicate in good faith with the Company as necessary to properly Adjust all Claims and handle all claim/loss adjustment and reporting matters." (Doc. No. 1-1 § 1.05). Through these actions (and inactions), Defendant has breached and repudiated its contractual duties to adjust claims and

cooperate in good faith.[2] Thus, Plaintiffs are highly likely to succeed on the merits of their breach of contract claim as to Defendant's requirement to adjust claims under the GAA.

B. Irreparable Harm

Generally, "irreparable injury is suffered when monetary damages are difficult to ascertain or are inadequate." Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co., 22 F.3d 546, 551 (4th Cir. 1994). "[W]hen the failure to grant preliminary relief creates the possibility of permanent loss of customers to a competitor or the loss of goodwill, the irreparable injury prong is satisfied." Id. at 552.

First, Plaintiffs argue that there is likelihood of irreparable harm here because money damages are difficult to ascertain. Plaintiffs point to potential state law liability and regulatory issues that may result from Defendant's failure to adjust the claims. Additionally, Plaintiffs claim they may be subject to liability from potential expensive private litigation, the extent of which is difficult to ascertain.

Second, Plaintiffs point to the potential loss of customers and/or goodwill that could result from Defendant's failure to adjust claims under the GAA. Plaintiffs argue that their association with Defendant, as the insurance company listed on their policies, will lead to a general reputation for unreliability as an insurer. This damage, Plaintiffs argue, would be difficult to measure and compensate via a future award of money damages.[3]

The Court finds that there is a likelihood of irreparable harm to Plaintiffs if Defendant does not adjust the claims. Potential expensive litigation and regulatory fines are calculable and

[2] Defendant has not made any substantive arguments in its briefing denying its breach of the GAA.

[3] Plaintiffs also argue that Defendant's refusal to adjust claims will cause irreparable harm to policyholders and third-party claimants. This argument is unpersuasive, since the preliminary injunction standard requires irreparable harm to the movant—not third parties.

can be remedied at a later date with money damages. However, the loss of goodwill and customers is a serious concern, especially in an industry where reliability is crucial. Notably, Plaintiffs do not employ claim adjusters and cannot simply adjust the claims and be reimbursed later. (Doc. No. 1 ¶ 2). The Court finds that irreparable harm is likely and this requirement for a preliminary injunction met.

C. Balancing of Harms

The Court finds that the harm to Plaintiffs outweighs any harm to Defendant. Requiring Defendant to uphold its contractual duties is not significant hardship for the purposes of a preliminary injunction. See Steves & Sons, Inc. v. JELD-WEN, Inc., 612 F. Supp. 3d 563, 598 (E.D. Va. 2020) (holding that the balance of equities tipped in favor of the plaintiff because the defendant "[would] suffer no unjustifiable hardship by complying with [its] contractual obligations."); Superior Performers, Inc. v. Thornton, No. 1:20-CV-00123, 2021 WL 2156960, at *9 (M.D.N.C. May 27, 2021) (concluding that the balance of the equities favored the plaintiff where "issuance of a permanent injunction merely requires [the defendant] to adhere to the contractual provisions to which he is already bound").

Here, as discussed above, Plaintiffs face harm that may result from Defendant's continued breach. On the other hand, a preliminary injunction will only require Defendant to adhere to its contractual obligation to adjust the claims. The balance of equities is strongly in Plaintiffs' favor.

D. Public Interest

The public interest also weighs in favor of issuance of a preliminary injunction. The public has an interest in the insurance industry functioning effectively and reliably, which requires the prompt adjustment of claims. Furthermore, this is at bottom a contract issue, and the

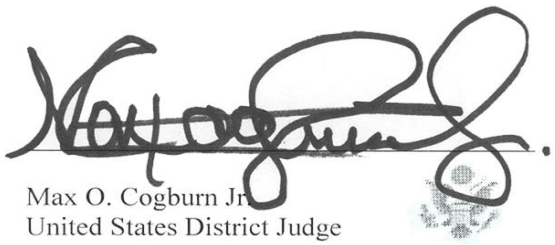
public has a significant interest in ensuring that valid contracts are enforced. Frankenmuth Mutual Ins. Co. v. Nat'l Bridge Builders, LLC, 641 F.Supp.3d 239, 250 (W.D.N.C. 2022).

IV. Conclusion

The Court finds that Plaintiffs have established (1) likelihood of success on the merits, (2) likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in their favor, and (4) that the injunction is in the public interest. Moreover, the Court finds that the exigencies of the situation demand mandatory injunctive relief. Therefore, Plaintiffs' motion for a preliminary injunction will be **GRANTED**.[4]

IT IS THEREFORE ORDERED that Plaintiffs' motion for preliminary injunction, (Doc. No. 6), is **GRANTED.**

Signed: June 2, 2025



Max O. Cogburn Jr
United States District Judge

[4] This injunction requires Defendant to adjust claims under the GAA. It does not pertain to Plaintiff's other allegations or requests for relief, including indemnification requirements in the contract.